

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR MARCH 9, 2026**

**REGULAR MEETING OF THE TOWNSHIP COMMITTEE – 5:30 P.M.**

**CALL TO ORDER**

**SUNSHINE ANNOUNCEMENT**

Mayor Corson read the following Open Public meeting notice into the record:

“In compliance with the Open Public Meetings Law, I wish to state that on March 6, 2026, the notice of this rescheduled meeting of the Upper Township Committee was posted on the Upper Township Website, and emailed to the Atlantic City Press, the Ocean City Sentinel-Ledger, the Herald Times and filed with the Township Clerk. Tonight’s meeting is being video recorded up until the closed session portion of this meeting and will be available on the Upper Township website. I hereby direct that this announcement be made a part of the minutes of this meeting.”

**SALUTE TO THE FLAG**

**MOMENT OF SILENCE AND REFLECTION**

**ROLL CALL**

Tyler Casaccio	Present
Victor Nappen	Present
Samuel Palombo	Absent
Zachary Palombo	Present
Curtis Corson	Present

Also present were Municipal Clerk Joanne Herron, Municipal Attorney John Amenhauser, Chief Financial Officer Barbara Ludy, and Township Administrator James Van Zlike. Registered Municipal Accountant Leon Costello was present for the budget introduction portion of the meeting.

**APPROVAL OF MINUTES** – February 25, 2026 Regular Minutes

Motion by Victor Nappen, second by Tyler Casaccio, to approve the February 25, 2026 Regular Minutes as submitted. During roll call vote all four Committee members present voted in the affirmative.

**REPORT OF GOVERNING BODY MEMBERS**

**Zachary Palombo, Committeeman**, reported that residents should have all brush and damaged trees from the recent storms to the curb before March 16<sup>th</sup> when Public Works will start pickup. He then reported that volunteers are needed to help stuff Easter eggs on March 25<sup>th</sup> from 3:00 pm to 7:00 pm at the Upper Township Community Center. Next, he reported that the Easter Egg Hunt will be held on March 28<sup>th</sup> from 10:30 am to 12:00 noon at Amanda’s Field. Lastly, he thanked the Committee for acknowledging March as Developmental Disabilities Awareness Month.

**Victor Nappen, Deputy Mayor**, welcomed Cape May County Commissioner Collette to the meeting and thanked her for providing the information for the Developmental Disabilities Awareness Month Resolution. He then thanked the Division of EMS employees for all they did during the blizzard. Lastly, he reported that he recently attended a meeting regarding updates to the Township’s website.

**Curtis Corson, Mayor**, also thanked Commissioner Collette for joining the Committee tonight and providing the information on Developmental Disabilities Awareness month. He then reported that brush and compost will be picked up in Strathmere tomorrow, and again on Tuesday next week. Next, he reminded residents to please place brush 10 feet away from any obstructions, such as mailboxes and poles, so that it can be picked up safely.

### **ADMINISTRATOR OVERVIEW**

**James Van Zlike, Township Administrator**, reported that he and Committeeman Sam Palombo have been in discussions on various ideas to expand open hours at the Community Center for Upper Township residents. He next reported that he, the Municipal Attorney, and Planning Board regarding the new NJPACT – REAL rules and regulations issued by the NJDEP and how the Township will be navigating the impact on our community. Lastly, he recognized and offered his deepest gratitude to the Atlantic City Electric linemen who were out day and night restoring services to our community for outages that occurred during the recent snowstorms.

### **2026 BUDGET - CAP Ordinance and Budget Introduction**

1. Introduction and first reading of Ordinance No. 007-2026 RE: CALENDAR YEAR 2026 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14). **Municipal Accountant provided a brief summary on Ordinance 007-2026. Motion by Victor Nappen, second by Zachary Palombo, to introduce Ordinance 007-2026 with a public hearing and final adoption scheduled for April 13, 2026. During roll call vote all four Committee Members present voted in the affirmative.**

**TOWNSHIP OF UPPER  
CALENDAR YEAR 2026  
ORDINANCE TO EXCEED THE MUNICIPAL BUDGET  
APPROPRIATION LIMITS  
AND TO ESTABLISH A CAP BANK  
(N.J.S.A. 40A: 4-45.14)**

**ORDINANCE NO. 007-2026**

**WHEREAS**, the Local Government Cap Law, N.J.S.A. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to **2.5%** unless authorized by ordinance to increase it to **3.5%** over the previous year's final appropriations, subject to certain exceptions; and,

**WHEREAS**, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the **3.5%** percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

**WHEREAS**, the Township Committee of the Township of Upper in the County of Cape May finds it advisable and necessary to increase its CY 2026 budget by up to **3.5%** over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

**WHEREAS**, the Township Committee of the Township of Upper hereby determines that a **1.0 %** increase in the budget for said year, amounting to **\$142,187.25** in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

**WHEREAS** the Township Committee of the Township of Upper hereby determines that any amount authorized hereinabove that is not appropriated, as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

**NOW THEREFORE BE IT ORDAINED**, by the Township Committee of the Township of Upper, in the County of Cape May a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2026 budget year, the final appropriations of the Township of Upper shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by **3.5 %**, amounting to **\$497,655.38** and that the CY 2026 municipal budget for the Township of Upper be approved and adopted in accordance with this ordinance; and,

**BE IT FURTHER ORDAINED**, that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

**BE IT FURTHER ORDAINED**, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and,

**BE IT FURTHER ORDAINED**, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 9<sup>TH</sup> DAY OF MARCH, 2026 AT THE TOWNSHIP HALL, AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 13<sup>TH</sup> DAY OF APRIL, 2026 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

2. Introduction of 2026 Budget.

**Municipal Accountant Leon Costello stated that the 2026 Budget is within the spending and levy caps and includes a 2.97 cent tax increase, which is one of the lowest in the County. He stated that health insurance costs and other costs have increased significantly. A public hearing will be held on April 13<sup>th</sup> to answer any questions the public may have. Pending no amendments the Budget can be adopted on April 13<sup>th</sup> after the public hearing.**

**Motion by Tyler Casaccio, second by Zachary Palombo, to introduce the 2026 Budget with the public hearing and final adoption scheduled for April 13, 2026 at 5:30 PM. During roll call vote all four Committee members present voted in the affirmative. The introduced budget is available for public inspection on the Upper Township website, a copy is available at the Upper Township Branch of the Cape May County Public Library, and copies are available at the Township Clerk's Office.**

3. Authorizing the execution of a Group Affidavit Re: Governing Body Certification of Compliance with United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VIII of the Civil Rights Act 1964".

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 078-2026**

**AUTHORIZING THE EXECUTION OF A GROUP AFFIDAVIT  
RE: GOVERNING BODY CERTIFICATION OF COMPLIANCE WITH THE  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S  
"ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND  
CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VIII  
OF THE CIVIL RIGHTS ACT 1964"**

**WHEREAS, N.J.S.A. 40A:4-5** as amended by P.L. 2017, c.183 requires the governing body of each municipality and county to certify that their local unit’s hiring practices comply with the United States Equal Employment Opportunity Commission’s “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964,” *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012) before submitting its approved annual budget to the Division of Local Government Services in the New Jersey Department of Community Affairs; and

**WHEREAS,** the members of the governing body have familiarized themselves with the contents of the above-referenced enforcement guidance and with their local unit’s hiring practices as they pertain to the consideration of an individual’s criminal history, as evidenced by the group affidavit form of the governing body attached hereto as exhibit “A”; and

**NOW, THEREFORE BE IT RESOLVED,** that the Township Committee of the Township of Upper, hereby states that it has complied with N.J.S.A. 40A:4-5, as amended by P.L. 2017, c.183, by certifying that the local unit’s hiring practices comply with the above-referenced enforcement guidance and hereby directs the Clerk to cause to be maintained and available for inspection a certified copy of this resolution and the required affidavit to show evidence of said compliance.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect pursuant to law.

Resolution No. 078-2026

Offered By: Casaccio

Seconded by: Nappen

Adopted: March 9, 2026

Roll Call:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

**Exhibit “A”**

**TOWNSHIP OF UPPER  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

## GROUP AFFIDAVIT

### GOVERNING BODY CERTIFICATION PURSUANT TO P.L. 2017, C.183 OF COMPLIANCE WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S "ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964"

We, members of the Township Committee of the Township of Upper, being duly sworn according to law, upon our oath depose and say:

1. We are duly elected members of the Township Committee of the Township of Upper, in the County of Cape May;
2. Pursuant to P.L. 2017, c.183, we have familiarized ourselves with the contents of the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012);
3. We are familiar with the local unit's hiring practices as they pertain to the consideration of an individual's criminal history;
4. We certify that the local unit's hiring practices comply with the above-referenced enforcement guidance.

The Committee then thanked Mr. Costello

#### **PUBLIC COMMENT ON AGENDA ITEMS ONLY – LIMITED TO FIVE (5) MINUTES PER PERSON**

**Melanie Collette, Cape May County Commissioner**, spoke on behalf of the ARC of Cape May County regarding agenda item #10, and thanked the Committee for designating March as Developmental Disabilities Awareness Month.

**Lou Barbato, Petersburg**, inquired about item #3 on the Agenda, authorizing the Group Affidavit Resolution. It was stated that this is a state requirement to confirm that the governing body complies with EEOC hiring practices.

**Nathalie Neiss, Petersburg**, inquired about item #17 on the Agenda. The CFO stated that this Resolution is a correction clarifying the salary for the Assistant Public Works Superintendent. Ms. Neiss then inquired about item #23. It was stated that this Resolution will rescind the prior action taken on Ordinance 001-2026 due to a deficiency in the noticing requirements, specifically that the required notices were not sent via certified mail. The Resolution also schedules a second reading and public hearing on Ordinance 001-2026 for March 23, 2026.

**Diane Leo, Marmora**, inquired if Ordinances 002-2026 and 003-2026 were passed on February 25, 2026. It was stated that those Ordinances were adopted.

#### **CONSENT AGENDA**

All Consent Agenda items listed below are routine in nature and will be enacted by one motion. If the Mayor or any Committee member wishes a particular agenda item to be considered separately, it will be removed from the consent agenda and acted on separately.

Motion by Victor Nappen, second by Tyler Casaccio, to approve the consent agenda items listed below. During roll call vote all four Committee members present voted in the affirmative.

**FILING OF REPORTS BY CONSENT**

4. Animal Control
5. Clerk's Office
6. Construction Code
7. Division of EMS
8. Finance Office
9. MUA Report

**RESOLUTIONS TO BE APPROVED BY CONSENT**

10. Designating March as Developmental Disabilities Awareness Month.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 079-2026**

**DESIGNATING MARCH AS DEVELOPMENTAL DISABILITIES AWARENESS MONTH**

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**WHEREAS**, individuals with developmental disabilities are valued members of our community who contribute their talents, perspectives, and abilities to the social, cultural, and economic vitality of our Township; and

**WHEREAS**, developmental disabilities affect individuals and families across all communities, and it is important to recognize both the challenges faced by these individuals and the many contributions they make in their schools, workplaces, and neighborhoods; and

**WHEREAS**, increasing public awareness and understanding of developmental disabilities helps promote acceptance, dignity, and respect for all people regardless of ability; and

**WHEREAS**, opportunities for inclusion in employment, education, housing, recreation, and community life strengthen our communities and allow individuals with developmental disabilities to lead meaningful, productive, and self-directed lives; and

**WHEREAS**, families, caregivers, educators, service providers, and advocates play a critical role in supporting individuals with developmental disabilities and ensuring that they have access to the resources and opportunities necessary to thrive; and

**WHEREAS**, organizations such as Easter Seals and The Arc of Cape May County provide essential services, advocacy, education, and support that empower individuals with developmental disabilities and their families while promoting greater community inclusion; and

**WHEREAS**, the month of March has been nationally recognized as Developmental Disabilities Awareness Month as a time to highlight the importance of building inclusive communities and expanding opportunities for people of all abilities;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper that March be designated as Developmental Disabilities Awareness Month in the Township of Upper and do hereby encourage all residents to promote inclusion and respect for people of all abilities.

Resolution No. 079-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

11. A Resolution supporting Senate Concurrent Resolution No. 106 to determine that the NJDEP’s proposed Coastal Regulations are inconsistent with legislative intent.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 080-2026**

**A RESOLUTION SUPPORTING SENATE CONCURRENT RESOLUTION NO. 106 TO  
DETERMINE THAT THE NJDEP’S PROPOSED COASTAL REGULATIONS ARE  
INCONSISTENT WITH LEGISLATIVE INTENT**

**WHEREAS**, In the January 20, 2026 New Jersey Register, 58 N.J.R. 13 247(a), the Department of Environmental Protection (DEP) adopted a set of rules and regulations, known as "New Jersey Protecting Against Climate Change – Resilient Environment and Landscapes" (NJPACT – REAL), which make sweeping changes to various DEP rules and programs in response to climate change, including drastically increasing the size of the Flood Hazard Area under the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), in addition to making changes to the State’s stormwater management, wetlands conservation, and coastal area protection rules; and

**WHEREAS**, the rules and regulations will have substantial effects on ordinary New Jerseyans, by limiting development rights for countless homeowners and property owners, devaluing property, and having a significant impact on property tax assessments; and

**WHEREAS**, the rules and regulations will increase the cost of housing in New Jersey, by greatly restricting development in large areas of the State and increasing regulatory costs; and

**WHEREAS**, the rules and regulations apply the Flood Hazard Area rules to “substantial improvements,” meaning, improvements that are valued at 50 percent or more of a property’s value, which occur in the expanded “Coastal Adjusted Flood Hazard Area,” creating disincentives to renovation,

redevelopment, and imposing significant economic burdens on lower-valued properties in large areas of the State; and

**WHEREAS**, the rule adoption contains economic, housing, and jobs impact statements that are severely inadequate and include little evidence, and the impacts of rules and regulations of this magnitude should be carefully studied prior to implementation; and

**WHEREAS**, under the State Constitution, the duties and powers of the Executive Branch are limited to executing those laws that are enacted by the Legislature and the Governor; and

**WHEREAS**, the Legislature recognizes this principle by including, within its laws, an explicit authorization for an Executive Department to adopt rules and regulations to implement the law; and

**WHEREAS**, however, in this case, the Legislature did not merely neglect to include such an authorization, it enacted no law; and

**WHEREAS**, instead, the DEP proposed the NJPACT – REAL rules and regulations, which constitute a major climate change law, unilaterally, likely with the well-intended aim of combating the negative effects of climate change, but forgetting that the DEP does not represent the people of New Jersey and thus that it oversteps its constitutional authority by proposing entirely new laws, and ignoring the fact that inaction can also be an expression of the Legislature's will; and

**WHEREAS**, the DEP claims, in its rule proposal, that approximately 50 existing laws provide it with the statutory authority to advance the NJPACT – REAL rules and regulations; and

**WHEREAS**, however, there are several issues with this claim as many of the laws, including P.L.1951, c.80 (C.58:10-35.1 et seq.) and the "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1) et seq., have not been amended for at least 40 years, meaning that the Legislature could not possibly have intended them to authorize the DEP to combat the effects of climate change, since the issue of climate change was not salient at that time; and

**WHEREAS**, in addition, the DEP fails to cite the one significant statute that has been enacted specifically in response to climate change, the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), perhaps in tacit recognition of the fact that that law explicitly provides the DEP with the authority to establish a greenhouse gas monitoring and reporting program only, and that the Legislature specifically removed a provision that would have authorized the DEP to adopt rules and regulations to implement the other provisions of the law, including the greenhouse gas emissions reduction goals, during the passage of the law; and

**WHEREAS**, it is therefore clear that the DEP has overstepped its authority in proposing the NJPACT – REAL rules and regulations, and the Legislature urges the DEP to follow the principles of the Constitution and await future Legislative enactments regarding how best to protect New Jerseyans lives and property from the negative effects of climate change.

**NOW THEREFORE, BE IT RESOLVED**, that the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, hereby formally supports Senate Concurrent Resolution No. 106, which would determine that the NJPACT – REAL Rules are inconsistent with legislative intent.

**BE IT FURTHER RESOLVED**, that certified copies of this Resolution shall be sent to the offices of Governor Mikie Sherrill, Senate President Nicholas Scutari, General Assembly Speaker Craig Coughlin, Senator Michael Testa, Assemblyman Antwan McClellan, and Assemblyman Erik Simonsen.

Resolution No. 080-2026  
Offered by: Nappen  
Adopted: March 9, 2026

Seconded by: Casaccio

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

12. A Resolution of the Township Committee of the Township of Upper adopting an Affirmative Marketing Plan.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 081-2026**

**A RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER  
ADOPTING AFFIRMATIVE MARKETING PLAN**

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**WHEREAS**, the Township of Upper (the “Township”) is constitutionally obligated under the Mount Laurel doctrine to provide a realistic opportunity for the construction of affordable housing for low- and moderate-income households; and

**WHEREAS**, the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c.2 (the “Amended Fair Housing Act”), establishes procedures for municipalities to obtain judicial review and compliance certification of their affordable housing obligations; and

**WHEREAS**, the Township timely filed a Resolution of Participation in the Affordable Housing Dispute Resolution Program and a Fourth Round Declaratory Judgment action in the Superior Court of New Jersey, Law Division, seeking a determination of its Fourth Round affordable housing obligations and continued protection from exclusionary zoning litigation; and

**WHEREAS**, as part of its Fourth Round affordable housing requirements, the Township is required to adopt an updated Affirmative Marketing Plan; and

**WHEREAS**, the Township has prepared an updated Affirmative Marketing Plan that is consistent with the applicable statutes and regulations.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, County of Cape May, State of New Jersey as follows:

1. The Township of Upper (“Township”) does hereby adopt the Affirmative Marketing Plan attached hereto as Exhibit A.
2. This Resolution shall take effect immediately upon adoption according to law.

Resolution No. 081-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X

Z. Palombo	X			
Corson	X			

13. A Resolution of the Township Committee of the Township of Upper adopting an Affordability Assistance Manual.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 082-2026**

**A RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER  
ADOPTING AFFORDABILITY ASSISTANCE MANUAL**

**WHEREAS**, the Township of Upper (the “Township”) is constitutionally obligated under the Mount Laurel doctrine to provide a realistic opportunity for the construction of affordable housing for low- and moderate-income households; and

**WHEREAS**, the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c.2 (the “Amended Fair Housing Act”), establishes procedures for municipalities to obtain judicial review and compliance certification of their affordable housing obligations; and

**WHEREAS**, the Township timely filed a Resolution of Participation in the Affordable Housing Dispute Resolution Program and a Fourth Round Declaratory Judgment action in the Superior Court of New Jersey, Law Division, seeking a determination of its Fourth Round affordable housing obligations and continued protection from exclusionary zoning litigation; and

**WHEREAS**, as part of its Fourth Round affordable housing requirements, the Township is required to adopt an updated Affordability Assistance Manual; and

**WHEREAS**, the Township has prepared an updated Affordability Assistance Manual that is consistent with the applicable statutes and regulations.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, County of Cape May, State of New Jersey as follows:

1. The Township of Upper (“Township”) does hereby adopt the Affordability Assistance Manual attached hereto as Exhibit A.
2. This Resolution shall take effect immediately upon adoption according to law.

Resolution No. 082-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

14. A Resolution of the Township Committee of the Township of Upper approving a Fourth Round Affordable Housing Trust Fund Spending Plan and requesting program and/or court approval of the Spending Plan

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 083-2026**

**A RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER  
APPROVING A FOURTH ROUND AFFORDABLE HOUSING TRUST FUND SPENDING  
PLAN AND REQUESTING PROGRAM AND/OR COURT  
APPROVAL OF THE SPENDING PLAN**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”) which governs how municipalities will comply with their affordable housing obligations for the Fourth Round (2025-2035); and

**WHEREAS**, the Administrative Office of the Courts issued Directive #14-24 (“AOC Directive #14-24), governing how municipalities file their compliance documents with the Affordable Housing Dispute Resolution Program (“the Program”); and

**WHEREAS**, the Amended FHA, AOC Directive #14-24, and applicable regulations, inclusive of the recently adopted N.J.A.C. 5:99, require a spending plan which projects anticipated revenues to the Township’s Affordable Housing Trust Fund and describes the anticipated expenditures of funds; and

**WHEREAS**, the Township seeks to adopt this amended spending plan to account for the updated requirements pursuant to N.J.A.C. 5:99; and

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, County of Cape May, State of New Jersey, as follows:

1. The Township Committee of the Township of Upper hereby approves the amended Fourth Round Spending Plan that is attached hereto as Exhibit A, and requests that the Program and/or the Court review and approve the Township’s Fourth Round Spending Plan.
2. This Resolution shall take effect immediately upon adoption, according to law.

Resolution No. 083-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

15. Authorizing the Township of Upper to enter into an Affordable Housing Agreement with Fairhaven Development Holdings, LLC.

**TOWNSHIP OF UPPER**

**CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 084-2026**

**AUTHORIZING THE TOWNSHIP OF UPPER TO ENTER INTO AN  
AFFORDABLE HOUSING AGREEMENT WITH FAIRHAVEN  
DEVELOPMENT HOLDINGS, LLC**

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**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”); and

**WHEREAS**, in accordance with the Amended FHA and the Administrative Office of the Court’s Directive No. 14-24, the Township filed a timely Fourth Round Declaratory Judgment complaint (“DJ Complaint”) with the Affordable Housing Dispute Resolution Program (“the Program”), along with its binding resolution, on January 28, 2025 entitled In the Matter of the Application of the Township of Upper, County of Cape May, Docket No. CPM-L-44-25, seeking a Compliance Certification and/or Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan, in addition to related forms of relief; and

**WHEREAS**, on March 27, 2025, the Honorable John C. Porto, P.J.Cv., issued an Order setting the Fourth Round Obligations to include a Present Need obligation of 0 and a Prospective Need obligation of 47; and

**WHEREAS**, Fairhaven Development Holdings, LLC, is a New Jersey limited liability company (hereinafter referred to as “Developer”); and

**WHEREAS**, Developer is the contract purchaser of Block 599, Lot 51 as identified on the Township of Upper’s Tax Map (the “Property”); and

**WHEREAS**, the Parties entered into a Memorandum of Understanding (“MOU”) dated August 26, 2025; and

**WHEREAS**, in furtherance of the MOU, the Parties seek to authorize the execution of an Affordable Housing Agreement outlining the Development and next steps; and

**WHEREAS**, the Township seeks to authorize the execution of an Affordable Housing Agreement; and

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May, and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Township Committee hereby authorizes and directs the Mayor, or his designee, and the Township Clerk to execute the Affordable Housing Agreement with Developer attached hereto as Exhibit A, subject to any de minimis revisions from Counsel; and
3. The Township hereby directs its Special Affordable Counsel to (a) file the fully executed Affordable Housing Agreement with the Court to the extent necessary; (b) take all actions reasonable and necessary, including di minimis revisions, to finalize the Affordable Housing Agreement; and (c) take all actions reasonable and necessary toward securing a compliance certification granting the Township immunity from Builder’s Remedy Lawsuits until July 1, 2035.

Offered by: Nappen  
Adopted: March 9, 2026  
Roll Call Vote:

Seconded by: Casaccio

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

16. Authorizing a Memorandum of Understanding to the Collective Bargaining Agreement between the Township of Upper and the AFSCME NJ Council 63 Local 3779, American Federation of State, County and Municipal Employees, AFL-CIO Majority Representative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 085-2026**

**RE: AUTHORIZING A MEMORANDUM OF UNDERSTANDING TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE TOWNSHIP OF UPPER AND THE AFSCME NJ COUNCIL 63 LOCAL 3779, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO MAJORITY REPRESENTATIVE**

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**WHEREAS**, the Township of Upper and AFSCME NJ Council 63 Local 3779, American Federation of State, County and Municipal Employees, AFL-CIO Majority Representative (“Local 3779”), are parties to a Collective Bargaining Agreement, (“Agreement”), for the term January 1, 2024 to December 31, 2028; and

**WHEREAS**, the parties have met and have negotiated an amendment to the Agreement regarding Article 18—Probationary Period; Initial Salary, Section C; and

**WHEREAS**, the terms and conditions of this amendment have been memorialized in a Memorandum of Understanding (MOU), which is attached to this Resolution; and

**WHEREAS**, the Township Committee of the Township of Upper desires to ratify the terms of the MOU and authorize the execution of same; and

**WHEREAS**, the approval of this amendment is contingent upon the formal ratification by the union membership.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are hereby incorporated by this reference.

2. The attached MOU amending the Collective Bargaining Agreement with Local 3779 is hereby ratified and approved.
3. The Mayor and Municipal Clerk are hereby authorized to execute the MOU. The terms of the MOU will be incorporated into the existing Agreement, with all other provisions remaining in effect.

Resolution No. 085-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

17. Amending Resolution No. 76-2026 appointing Nicholas Mason as Assistant Public Works Superintendent.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 086-2026**

**RE: AMENDING RESOLUTION NO. 76-2026 APPOINTING NICHOLAS MASON  
AS ASSISTANT PUBLIC WORKS SUPERINTENDENT**

**WHEREAS**, Resolution No. 76-2026 provisionally appointed Nicholas Mason as Assistant Public Works Superintendent, subject to Civil Service review and approval, effective March 1, 2026, at a salary of \$95,000.00, in accordance with the Salary Ordinance; and

**WHEREAS**, Nicholas Mason's previously appointed title and corresponding stipend as CDL Training Coordinator were inadvertently omitted from Resolution No. 76-2026; and

**WHEREAS**, it is necessary to amend Resolution No. 76-2026 to restore Nicholas Mason's duly appointed title as CDL Training Coordinator, with an annual stipend of \$2,000.00, in accordance with the Salary Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. Resolution No. 76-2026 is hereby amended to restore Nicholas Mason’s duly appointed title as CDL Training Coordinator, together with the annual stipend of \$2,000.00, in accordance with the Salary Ordinance.

Resolution No. 086-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

18. Authorizing the purchase of certain items through the TIPS Government Purchasing Cooperative with funds from Capital Improvement Bond Ordinance No. 012-2024 in the amount of \$47,096.23.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 087-2026**

**RE: AUTHORIZING THE PURCHASE OF CERTAIN ITEMS THROUGH THE TIPS  
GOVERNMENT PURCHASING COOPERATIVE WITH FUNDS FROM CAPITAL  
IMPROVEMENT BOND ORDINANCE NO. 012-2024 IN THE AMOUNT OF \$47,096.23**

**WHEREAS**, it is necessary for the Township of Upper to make certain capital purchases;  
and

**WHEREAS**, the Township Committee has determined that a purchase from a national cooperative contract will result in cost savings after all factors have been considered; and

**WHEREAS**, N.J.S.A. 52:34-6.2 allows the Township of Upper to utilize national cooperative contracts as a method of procurement; and

**WHEREAS**, the Township Committee adopted the 2024 Capital Improvement Bond Ordinance No. 012-2024 on July 8, 2024; and

**WHEREAS**, the Township’s Qualified Purchasing Agent has reviewed and approved the quote for audio-video upgrades for the Courtroom at Township Hall from Business Information Systems, Inc. of Boca Raton, Florida through TIPS Contract No. 230901; and

**WHEREAS**, Business Information Systems, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that Business Information Systems, Inc. has not made any reportable contributions to a political or candidate committee in the Township in the previous one year, and that their contract will prohibit Business Information Systems, Inc. from making any reportable contributions through the term of their contract; and

**WHEREAS**, the Chief Financial Officer of the Township has certified the availability of funds to allow the award of contract for the purchase herein authorized and has certified that adequate funds have been appropriated for these purposes from Capital Improvement Bond Ordinance No. 012-2024; and

**WHEREAS**, the Chief Financial Officer has confirmed that the Township has complied with N.J.S.A. 52:34-6.2 as well as all other legal requirements for this method of procurement.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Township Committee of the Township of Upper, County of Cape May, New Jersey hereby authorizes the audio-video upgrades for the Courtroom at Township Hall from Business Information Systems, Inc. of Boca Raton, Florida in the amount of **\$47,096.23** with funds from 2024 Capital Improvement Bond Ordinance No. 012-2024 through TIPS Contract No. 230901.
3. The Chief Financial Officer is hereby authorized, directed and empowered to execute any and all necessary documents in order to implement the intent of this Resolution.

Resolution No. 087-2026

Offered By: Nappen

Seconded By: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

19. Authorizing the purchase of certain items and for the Chief Financial Officer to withdraw funds in the amount not to exceed \$29,962.40 from the account entitled Recreation Trust Account for such purposes.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 088-2026**

**RE: AUTHORIZING THE PURCHASE OF CERTAIN ITEMS AND FOR THE CHIEF FINANCIAL OFFICER TO WITHDRAW FUNDS IN AN AMOUNT NOT TO EXCEED \$29,962.40 FROM THE ACCOUNT ENTITLED RECREATION TRUST ACCOUNT FOR SUCH PURPOSES**

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**WHEREAS**, it is necessary for the Township of Upper to replace the boat ramp in Beesley’s Point; and

**WHEREAS**, the Township of Upper has available \$29,962.40 in the Recreation Trust account to make such purchases; and

**WHEREAS**, the Township’s QPA has reviewed and approved the quote from Harbor Outfitters of Ocean View, New Jersey.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. The Township Committee of the Township of Upper, Cape May County, New Jersey hereby authorizes the replacement of the Beesley’s Point boat ramp in an amount not to exceed \$29,962.40 from Harbor Outfitters of Ocean View, New Jersey.

3. The Chief Financial Officer of the Township of Upper is hereby authorized, directed and empowered to withdraw funds in an amount not to exceed \$29,962.40 from the Recreation Trust account to pay for the replacement of the Beesley’s Point boat ramp and is empowered to execute any and all necessary documents in order to implement the intent of this Resolution.

Resolution No. 088-2026

Offered By: Nappen

Seconded By: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

20. Appointing Matthew Jefferson as a full-time employee to the Upper Township Division of Emergency Medical Services.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 089-2026**

**RE: APPOINTING MATTHEW JEFFERSON AS A FULL-TIME EMPLOYEE TO  
THE UPPER TOWNSHIP DIVISION OF EMERGENCY MEDICAL SERVICES**

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**WHEREAS**, a need exists to appoint qualified personnel as full-time employees to the Upper Township Division of Emergency Medical Services to ensure optimal operation; and

**WHEREAS**, Matthew Jefferson possesses all the requisite qualifications for appointment to said position; and

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. Matthew Jefferson is hereby appointed to the Division of Emergency Medical Services as a full-time Emergency Medical Technician, effective March 16, 2026, at an annual salary of \$62,930.00, in accordance with the Salary Ordinance.
3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 089-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

21. Appointing Abrianna Hoover as a part-time Emergency Medical Technician to the Upper Township Division of Emergency Medical Services.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 090-2026**

**RE: APPOINTING ABRIANNA HOOVER AS A PART-TIME**

**EMERGENCY MEDICAL TECHNICIAN TO THE UPPER TOWNSHIP  
DIVISION OF EMERGENCY MEDICAL SERVICES**

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**WHEREAS**, a need exists to appoint qualified personnel as part-time employees to the Upper Township Division of Emergency Medical Services to ensure optimal operation; and

**WHEREAS**, Abrianna Hoover possesses all the requisite qualifications for appointment to said position; and

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. Abrianna Hoover is hereby appointed to the Division of Emergency Medical Services as a part-time Emergency Medical Technician, pending successful pre-employment testing, at a rate of \$22.71 per hour, in accordance with the Salary Ordinance.
3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 090-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

22. Appointing Jeremy Keating as a full-time Laborer 1 to the Upper Township Department of Public Works.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 091-2026**

**RE: APPOINTING JEREMY KEATING AS A FULL-TIME LABORER 1 TO THE UPPER  
TOWNSHIP DEPARTMENT OF PUBLIC WORKS**

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**WHEREAS**, a need exists to appoint qualified personnel as a full-time employee to the Upper Township Department of Public Works to ensure optimal operation; and

WHEREAS, Jeremy Keating possesses all the requisite qualifications for appointment to said position; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. Jeremy Keating is hereby appointed to the Upper Township Department of Public Works as a full-time Laborer 1, effective March 10, 2026, at a salary of \$55,785.00 in accordance with the Salary Ordinance.
3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 091-2026

Offered by: Nappen

Seconded by: Casaccio

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

**RESOLUTIONS TO BE ACTED ON SEPARATELY**

23. Rescinding action taken by the Upper Township Committee pertaining to adoption of Ordinance 001-2026 and scheduling of second reading and public hearing on Ordinance 001-2026 for the March 23, 2026 Township Committee meeting. **The Municipal Attorney stated that Ordinance 001-2026 not only permitted cannabis retail sales use within the CM2 zone, particularly within the cannabis overlay zone, but also established the cannabis overlay zone as a subset of the CM2 zone. Because the Ordinance amends zoning regulations, the Township is required to comply with the notice provisions of the Municipal Land Use Law, which include providing notice of the public hearing to property owners within 200 feet of the affected area by both regular and certified mail. It was determined that notice was provided by regular mail but not by certified mail. This Resolution rescinds the action taken on February 25, 2026 and schedules a second reading and public hearing for March 23, 2026.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION**

**RESOLUTION NO. 092-2026**

**RE: RESCINDING ACTION TAKEN BY THE UPPER TOWNSHIP COMMITTEE  
PERTAINING TO ADOPTION OF ORDINANCE 001-2026 AND SCHEDULING OF SECOND  
READING AND PUBLIC HEARING ON ORDINANCE 001-2026 FOR THE MARCH 23, 2026**

## TOWNSHIP COMMITTEE MEETING

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**WHEREAS**, N.J.S.A. 40:55D-62.1 requires, in pertinent part, that notice of a proposed amendment to a municipal zoning ordinance “shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property as shown on the current tax duplicates, located, within the district and within 200’ in all directions of the boundaries of the district. Notice shall be given to a property owner by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate”; and

**WHEREAS**, while notice of the second reading and public hearing of Ordinance 001-2026 was mailed by regular U.S. Mail to all required property owners pursuant to the requirements of N.J.S.A. 40:55D-62.1, it was discovered that certified mailings to all required owners and/or their agents were not mailed in advance of the second reading and public hearing related to Ordinance 001-2026, which was conducted on Wednesday, February 25, 2026; and

**WHEREAS**, due to the aforementioned procedural error, any, and all, action taken by the Township Committee of the Township of Upper related to Ordinance 001-2026 on February 25, 2026, shall be considered void *ab initio* and the Municipal Clerk shall be required to properly notice all required property owners and/or their agents pertaining to proposed Ordinance 001-2026 and to schedule a second reading and a public hearing on proposed Ordinance 001-2026 at a future meeting of the Upper Township Committee.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Township Committee of the Township of Upper, County of Cape May, New Jersey, hereby resolves to rescind the previously adopted Ordinance 001-2026 due to a procedural noticing error that was discovered by the Municipal Clerk subsequent to the adoption of Ordinance 001-2026 on February 25, 2026.
3. The Township Committee of the Township of Upper, County of Cape May, New Jersey,

in accordance with N.J.S.A. 40:55D-62.1, hereby requests that the Municipal Clerk provide notice to all required property owners and/or their agents indicating that a second reading and a public hearing on proposed Ordinance 001-2026 shall be conducted at a regularly scheduled meeting of the Township Committee of the Township of Upper on Monday, March 23, 2026, beginning at 5:30 p.m.

Resolution No. 092-2026

Offered By: Nappen

Seconded By: Z. Palombo

Adopted: March 9, 2026

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo				X
Z. Palombo	X			
Corson	X			

**ORDINANCES**

24. Public hearing and final adoption of Ordinance No. 005-2026 RE: AN ORDINANCE OF THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY AMENDING, REVISING AND SUPPLEMENTING CHAPTER 20 ENTITLED “ZONING” OF THE MUNICIPAL CODE BY REPEALING SECTIONS 20-14 THROUGH 20-14.5 AND REPLACING WITH NEW SECTIONS 20-14 THROUGH SECTION 20-14.21 AND REPEALING SECTION 20-15 THROUGH 20-15.10 AND REPLACING WITH SECTION 20-15 THROUGH 20-15.10 AND AMENDING IN PART SECTION 20-4.19 AFFORDABLE ACCESSORY APARTMENTS.

**Special Legal Counsel William Olson of the firm Surenian, Edwards, Buzak & Nolan LLC was present via Zoom and provided a brief overview of Ordinance 005-2026.**

**Mayor Corson then opened the public hearing. During the public hearing portion there were the following speakers:**

**Nathalie Neiss, Petersburg,** inquired about several matters regarding the Ordinance including the timeframe of the various rounds and the properties involved.

**Diane Leo, Marmora,** inquired as to where the areas of affordable housing are located and the criteria to meet eligibility.

**Lou Barbato, Petersburg,** inquired if the development of affordable housing and asked for explanation of affordable accessory apartments.

**Nathalie Neiss, Petersburg,** inquired if affordable accessory apartments must meet construction setbacks and septic requirements.

**There being no more speakers, Mayor Corson then closed the public hearing. Motion by Victor Nappen, second by Tyler Casaccio, to adopt Ordinance No. 005-2026. During roll call vote all four Committee members present voted in the affirmative.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 005-2026**

**AN ORDINANCE OF THE TOWNSHIP OF UPPER, COUNTY OF  
CAPE MAY, STATE OF NEW JERSEY AMENDING, REVISING AND SUPPLEMENTING  
CHAPTER 20 ENTITLED “ZONING” OF THE MUNICIPAL CODE BY REPEALING  
SECTIONS 20-14 THROUGH 20-14.5 AND REPLACING WITH NEW SECTIONS 20-14  
THROUGH SECTION 20-14.21 AND REPEALING SECTION 20-15 THROUGH 20-15.10 AND  
REPLACING WITH SECTION 20-15 THROUGH 20-15.10 AND AMENDING IN PART  
SECTION 20-4.19 AFFORDABLE ACCESSORY APARTMENTS**

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**WHEREAS**, in accordance with N.J.S.A. 52:27D-304.1 et seq., the Governing Body of the Township of Upper intends upon repealing and replacing Chapter 20, Sections 20-14 through 20-14.5 and replacing with new Sections 20-14 through 20-14.21; repealing and replacing Sections 20-15 through 20-15.10 and replacing with new Sections 20-15 through 20-15.11; and amending Section 20-4.19 so as to incorporate and implement its present and prospective Fair Share Plan as provided by the Fair Housing Act, N.J.S.A. 52:27D-301 et al.; and

**WHEREAS**, on June 30, 2025, the Planning Board of the Township of Upper, Cape May County, State of New Jersey, adopted a Resolution approving a Fourth Round Housing Element of the Master Plan and Fair Share Plan; and

**WHEREAS**, on July 14, 2025, the Township Governing Body endorsed the Fourth Round Housing Element and Fair Share Plan adopted by the Planning Board; and

**WHEREAS**, the Governing Body of the Township of Upper intends upon considering the adoption of an Ordinance amending Chapter 20 of the Code of the Township of Upper, to implement the required affordable housing ordinances, development fee ordinances and implementing ordinances, and has introduced on first reading Ordinance 005-2026 and moved to submit the same to the Planning Board of the Township of Upper for consideration and recommendation; and

**WHEREAS**, the Township Planning Board recommends the adoption of this ordinance pursuant to the approval of the Housing Element and Fair Share Plan and Spending Plan to the Governing Body in accordance with the requirements of N.J.S.A. 40:55D-64. The Planning Board found that the proposed ordinance is consistent with the adopted Master Plan Elements and made a favorable recommendation supporting the ordinance amendments at their March 5, 2026 meeting.

**NOW THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Upper, County of Cape May, State of New Jersey that Chapter 20, entitled “Zoning” of the Code of the Township of Upper, be amended, revised and supplemented in accordance with the following:

**SECTION 1.: REPEAL SECTIONS 20-14 THROUGH 20-14.5 AND REPLACE WITH NEW SECTIONS 20-14 THROUGH 20-14.21 AS FOLLOWS:**

**Section 20-14 Affordable Housing**

**Section 20-14.1 Introduction & Applicability**

1. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in *Township of Upper* consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing (“COAH”) at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls (“UHAC”) at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan (“HEFSP”).

2. This Ordinance is intended to ensure that very-low-, low- and moderate-income units (“affordable units”) are created with controls on affordability over time and that very-low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100 percent affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to affirmative marketing and random selection procedures set forth in UHAC.
3. The *Township of Upper* Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very-low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
4. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
5. Applicability
  - a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that are proposed to be created pursuant to the municipality’s most recently adopted HEFSP, unless granted a waiver pursuant to UHAC and approved by the County-level housing judge. All affordable housing units and affordable housing developments that were previously created pursuant to any prior approvals, HEFSP, and/or a Judgment of Compliance and Repose (JOR) shall remain subject to the terms of those prior documents.
  - b. This Ordinance shall apply to all future developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
  - c. Projects receiving federal Low Income Housing Tax Credit financing shall be required to follow UHAC unless exempt pursuant to N.J.A.C. 5:80-26.1, including but not limited to developments with anticipated funding from the Federal Low-Income Housing Tax Credit (LIHTC) pursuant to Section 42 of the Internal Revenue Code. The developer shall be responsible for administration and affirmative marketing of the affordable units.

#### **Section 20-14.2 Definitions**

As used herein the following terms shall have the following meanings:

“Accessory apartments” means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed preexisting primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling. Accessory apartments are also referred to as “accessory dwelling units”.

“Act” means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

“Adaptable” means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the “State Uniform Construction Code Act,” P.L.1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c. 350 (C.52:27D-123.15).

“Administrative agent” means the entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

“Affirmative Marketing Plan” means the municipally adopted plan of strategies from which the administrative agent will choose to implement as part of the Affirmative Marketing requirements.

“Affirmative Marketing Process” or “Program” means the actual undertaking of Affirmative Marketing activities in furtherance of each project with very low-, low-, and moderate-income units. “Affordability assistance” means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner’s association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

“Affordability average” means an average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

“Affordable” means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

“Affordable housing development” means a development included in a municipality’s housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

“Affordable Housing Dispute Resolution Program” or “the Program” refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

“Affordable Housing Monitoring System” or “AHMS” means the Department’s cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

“Affordable Housing Trust Fund” or “AHTF” means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the “Neighborhood Preservation Non-lapsing Revolving Fund” and “Balanced Housing” mean the AHTF.

“Affordable unit” means a housing unit proposed or developed pursuant to the Act, including but not limited to units created with municipal affordable housing trust funds.

“Age-restricted housing” means a housing unit that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that: 1. All the residents of the development where the unit is situated are 62 years or older; 2. At least 80 percent of the units are occupied by one person that is 55 years or older; or 3. The development has been designated by the Secretary of HUD as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (C.55:14K-1 et seq.).

“Assisted living residence” means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to ensure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units must offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

“Barrier-free escrow” means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

“Builder’s remedy” means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

“Certified household” means a household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.

“CHOICE” means the no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

“COAH” or the “Council” means the Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Compliance certification” means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a “judgment of compliance” or “judgment of repose.” The term “compliance certification” shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c. 222 (C.52:27D-313).

“Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217(N.J.S.A. 52:27D-119 et seq.).

“County-level housing judge” means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the Act.

“DCA” and “Department” mean the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Department” means the New Jersey Department of Community Affairs.

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

“Development fee” means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

“Dispute Resolution Program” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

“Division” means the Division of Local Planning Services within the Department of Community Affairs.

“Emergent opportunity” means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

“Equalized assessed value” or “EAV” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

“Equity share amount” means the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of a restricted ownership unit, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent.

“Exit sale” means the first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

“Exclusionary zoning litigation” means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder’s remedy.

“Extension of expiring controls” means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

“Fair share obligation” means the total of the present need and prospective need, including prior rounds, as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

“Fair share plan” means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

“FHA” means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

“Green Building Strategies” means the strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

“HMFA” or “the Agency” means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

“Household income” means a household’s gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

“Housing element” means the portion of a municipality’s master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements proposals, maps, diagrams, and text designed to meet the municipality’s fair share of its region’s present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

“Housing region” means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

“Inclusionary development” means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

“Judgment of compliance” or “judgment for repose” means a determination issued by the Superior Court approving a municipality’s fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

“Low-income household” means a household with a household income equal to 50 percent or less of the regional median income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Mixed use development” means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities maybe considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or

otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

“Moderate-income household” means a household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“MONI” means the no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

“Municipal housing liaison” or “MHL” means an appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

“Municipal affordable housing trust fund” means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing previously approved prior to March 20, 2024 (per P.L. 2024, c.2), barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

“Municipal development fee ordinance” means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

“New construction” means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

“New Jersey Affordable Housing Trust Fund” means an account established pursuant to N.J.S.A. 52:27D-320.

“New Jersey Housing Resource Center” or “Housing Resource Center” means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

“95/5 restriction” means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

“Non-exempt sale” means any sale or transfer of ownership of a restricted unit to one’s self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary; and the transfer of ownership by court order.

“Nonprofit” means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

“Non-residential development” means:

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

“Non-residential development fee” means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

“Order for repose” means the protection a municipality has from a builder’s remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

“Payment in lieu of constructing affordable units” means the prior approval of the payment of funds to the municipality by a developer when affordable units were not produced on a site zoned for an inclusionary development. The statutory permission for payments in lieu of constructing affordable units was modified per P.L. 2024, c.2.

“Prospective need” means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

“Qualified Urban Aid Municipality” means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

“Person with a disability” means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

“Price differential” means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

“Prior round unit” means a housing unit that addresses a municipality’s fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality’s fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

“Random selection process” means a lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans’ preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

“RCA administrator” means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

“RCA project plan” means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

“Receiving municipality” means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality’s fair share obligation.

“Reconstruction” means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

“Recreational facilities and community centers” means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ballfields, meeting halls, and classrooms, accommodating either organized or informal activity.

“Regional contribution agreement” or “RCA” means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into and was approved by COAH and/or Superior Court prior to July 18, 2008, to transfer a portion of a municipality’s affordable housing obligation to another municipality within its housing region.

“Regional median income” means the median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

“Rehabilitation” means the repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. With respect to units in assisted living residences, rent does not include charges for food and services.

“Residential development fee” means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

“Spending plan” means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

“State Development and Redevelopment Plan” or “State Plan” means the plan prepared pursuant to sections 1 through 12 of the “State Planning Act,” P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c. 398 (C.52:18A-200).

“Supportive housing household” means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth

aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant’s self-identification of household members on the affordable housing application.

“Supportive housing sponsoring program” means grant or loan program which provided financial assistance to the development of the unit.

“Supportive housing unit” means a restricted rental unit that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. A supportive housing unit is intended to provide long-term, community-based housing for individuals with intellectual or developmental disabilities, as defined at N.J.S.A. 30:6D-25(b). Such units must be leased subject to the affordability controls established herein; remain subject to Affirmative Marketing requirements, household certification, and administrative agent oversight; and may, with the approval of the municipal housing liaison and the administrative agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and the project’s Affirmative Marketing Program. A supportive housing unit may, with the approval of the administrative agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and remain fully subject to the affordability controls of this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services. Supportive housing units are also referred to as permanent supportive housing units.

“Transitional housing” means temporary housing that: (1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (3) is licensed by the department; and (4) allows households to remain for a minimum of six months.

“Treasurer” means the Treasurer of the State of New Jersey.

“UHAC” means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

“Unit type” means type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

“Very-low-income household” means a household with a household income less than or equal to 30 percent of the regional median income.

“Very-low-income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

“Very-low-income unit” means a restricted unit that is affordable to a very-low-income household. Very-low-income units are a subset of low-income units.

“Veteran” means a veteran as defined at N.J.S.A. 54:4-8.10.

“Veterans’ preference” means the agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors and is considered a major system for rehabilitation.

### **Section 20-14.3 Municipality-wide Mandatory Set-Aside**

1. All new residential construction/development proposing a minimum of five new housing units in any zoning district, whether created through existing zoning; or created through any municipal rezoning; or created through any Zoning Board action including a use or density variance; or created through any redevelopment plan and/or rehabilitation plan, is required to include an affordable housing set-aside of 20 percent.
2. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
3. All such affordable units shall be governed by this ordinance for the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
4. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
5. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.
6. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.
7. For any such development where the Township's land use ordinances (e.g., zoning or an adopted redevelopment plan) already permitted residential development as of the effective date of the adoption of this section, this requirement shall only apply if the Township permits an increase in approvable and developable gross residential density to beyond the permitted approvable and developable gross residential density as of the effective date of the adoption of this ordinance.
8. In the event that the inclusionary set-aside of 20 percent of the total number of residential units does not result in a full integer, the developer shall choose one of two options for addressing the fractional unit:
  - a. The developer may round the set-aside upward to construct a whole additional affordable unit; or
  - b. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units and shall also contribute the fractional subsidy payment (“fractional subsidy payment”) to be made to the municipality and deposited in the municipal Affordable Housing Trust Fund. The fractional subsidy payment amount shall be calculated as the fractional unit multiplied by the base subsidy payment amount currently established by the municipality as the average subsidy reflected in financial pro formas for 100 percent affordable housing or subsidized developments in the municipality or region on file with the municipality. For example, if seven total units are developed at an inclusionary site, a 20 percent set-aside would require 1.4 affordable units. Per the requirements above:

The developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two (2) affordable housing units; or The developer shall round the set-aside downward so as to construct only one affordable unit AND shall pay into the municipal affordable housing trust fund a fractional subsidy payment equal to the dollar amount established by the municipality multiplied by 0.4.

### **Section 20-14.4 Affordable Housing Programs**

1. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, “All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions.” These crediting mechanisms are expressed as way of an example, and the list is non-exhaustive of potential crediting mechanisms, and any crediting requirements shall be pursuant to the regulatory, statutory, or legal requirements detailing the crediting mechanism. While not anticipated, should there be a conflict between this subsection and the regulatory requirements for crediting of the following mechanisms, the pertinent valid regulations shall control.
2. Rehabilitation Programs
3. Accessory Apartment program in accordance with Section 20-4.19 and the following: (per N.J.A.C. 5:93-5.9 as may be updated per various sections in N.J.A.C. 5:97-6.8).
  - a. An accessory apartment program shall provide very-low- low- and moderate-income units.
  - b. Per N.J.A.C. 5:97-6.8(c)1, at the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to income eligible households consistent with the income category and rent structure of the unit.
  - c. Rents of accessory apartments shall be established using the same methodology of affordable rental units discussed herein.
  - d. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental for the duration of the control period.
  - e. The municipal accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
  - f. Per N.J.A.C. 5:97-6.8(b)2, the municipality shall provide a minimum of \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
4. Market to Affordable program
5. Extension of Controls Program
6. Assisted Living Residence
7. Supportive Housing and Group Homes

**Section 20-14.5 New Construction**

1. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.
2. Completion Schedule (previously known as phasing). Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low- and moderate-income units whether developed in a single-phase development, or in a multi-phase development:

Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy	Minimum Percentage of Affordable Units Issued a Temporary or Final Certificate of Occupancy
25+1	10
50	50

75	75
90	100

3. Design. The following design requirements apply to affordable housing developments, excluding prior round units.
  - a. Design of 100 percent affordable developments:
    - i. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
    - ii. Each bedroom in each restricted unit must have at least one window.
    - iii. Restricted units must include adequate air conditioning and heating.
  - b. Design of developments comprising market-rate rental units and restricted rental units. The following does not apply to prior round units, unless stated otherwise.
    - i. Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
    - ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.
    - iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.
    - iv. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
    - v. Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.
    - vi. Each bedroom in each restricted unit must have at least one window.
    - vii. Restricted units must be of the same unit type as market-rate units within the same building.
    - viii. Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
  - c. Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:
    - i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

- ii. Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.
  - iii. Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, town homes, and/or single-family homes. Penthouses and higher priced end townhouses may be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
  - iv. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
  - v. Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
  - vi. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
  - vii. Each bedroom in each restricted unit must have at least one window; and
  - viii. Restricted units must include adequate air conditioning and heating.
4. Utilities.
- a. Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
  - b. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.A.C. 5:80-26.13(e).
5. Low/moderate split and bedroom distribution. (The municipality has chosen to allow rounding)
- a. Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
  - b. In each affordable housing development, at least 50 percent of the restricted units within each bedroom distribution rounded up or down to the nearest whole number shall be very low- or low-income units.
  - c. Within rental developments, of the total number of affordable rental units, at least 13 percent, rounded up or down to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count and counted as part of the required number of low-income units within the development.
  - d. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
    - i. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;

- ii. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
  - iii. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent, rounded up or down to the nearest whole number, of the total number of low- and moderate-income units.
  - iv. At least 30 percent of all low- and moderate-income units, rounded up or down to the nearest whole number, shall be two-bedroom units.
  - v. At least 20 percent of all low- and moderate-income units, rounded up rounded up or down to the nearest whole number, shall be three-bedroom units.
  - vi. The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
- e. Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least five percent of those restricted units.
6. Accessibility requirements.
- a. Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.
  - b. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all town home dwelling units and of all other multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
    - i. An adaptable toilet and bathing facility on the first floor;
    - ii. An adaptable kitchen on the first floor;
    - iii. An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;
    - iv. An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;
    - v. If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
    - vi. An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-31 1a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
      - (a) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

- (b) To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - (c) The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - (d) The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.
  - (e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.
- vii. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is “site-impracticable” to meet the requirements. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

**Section 20-14.6 Regional Income Limits.**

1. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
2. Regional income limits are based on regional median income, which is established by a regional weighted average of the “median family incomes” published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
3. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

**Section 20-14.7 Maximum Initial Rents And Sales Prices.**

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.
2. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
3. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60 percent of regional median income. The maximum rent may be increased to no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units; however, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent (rounded up) of the restricted units.
4. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units. Very low-income units, if required, should be distributed between each bedroom count as proportionally as possible to the total number of restricted units within each bedroom count, and shall be part of the low-income requirement.
5. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70 percent of median income, and each affordable housing development must achieve an affordability average that does not

exceed 55 percent for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.

6. The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.
7. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
  - a. A studio or efficiency unit shall be affordable to a one-person household;
  - b. A one-bedroom unit shall be affordable to a one and one-half person household;
  - c. A two-bedroom unit shall be affordable to a three-person household;
  - d. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - e. A four-bedroom unit shall be affordable to a six-person household.
8. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
  - a. A studio or efficiency unit shall be affordable to a one-person household;
  - b. A one-bedroom unit shall be affordable to a one and one-half person household; and
  - c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.
9. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
10. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
11. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following a minimum 90-day notice provided to the occupant household, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3 and published by the Agency. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial

maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

#### **Section 20-14.8 Affirmative Marketing.**

1. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5-1 et seq., and age-restricted units as permitted pursuant to 42 U.S.C. §§ 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 6 and is required to be followed throughout the period of deed restriction.
3. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
  - a. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
  - b. There shall be a regional preference for all households that live and/or work in Housing Region 6 comprising Atlantic Cape May, Cumberland, and Salem Counties.
  - c. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
  - d. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
5. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent should consider the use of language translations where appropriate.
6. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.

7. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. The Township may add a list of community and regional organizations to receive notice of the availability of affordable housing units in addition to the following required entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Mainland/Pleasantville, Mizpah, Atlantic City, and Cape May County Branches of the NAACP, and the Supportive Housing Alliance. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.
8. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of HUD-certified housing counselors or otherwise experienced entities approved by the Division providing counseling services on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
9. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy and may begin before construction commences. For owner-occupied units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and outreach activities must continue, as long as applications are being accepted, except that paid advertising may cease when the number of applications received is at least three times the number of units to be filled.
10. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of owner-occupied units, in which case, applications must be accepted for no less than 30 days.
11. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

**Section 20-14.9 Selection of Occupants of Affordable Housing Units.**

1. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.
2. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

**Section 20-14.10 Occupancy Standards.**

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - a. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
  - b. Provide a bedroom for every two adult occupants;
  - c. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
  - d. Avoid placing a one-person household into a unit with more than one bedroom.

**Section 20-14.11 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80- 26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.
2. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).

3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.
4. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
5. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
  - a. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
  - b. If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
6. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
7. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
8. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
9. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

**Section 20-14.12 Price Restrictions for Restricted Ownership Units and Resale Prices.**

1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
  - a. The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.
  - b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.
    - i. If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.
    - ii. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3
  - c. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:
    - i. those that render the unit suitable for a larger household or the addition of a bathroom.

- ii. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);
  - d. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

#### **Section 20-14.13 Buyer Income Eligibility.**

1. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30 percent of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80 percent of median income.
2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.
3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - a. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;
  - b. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or
  - c. The household is currently in substandard or overcrowded living conditions;
  - d. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

**Section 20-14.14 Limitations on Indebtedness Secured by Ownership Unit; Subordination.**

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
2. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

**Section 20-14.15 Control Periods for Restricted Rental Units.**

1. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432 and shall remain subject to the requirements of this ordinance for a period of at least 30 years as applicable unless otherwise indicated.
2. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 40 years. Restricted rental units created as part of developments receiving 9 percent Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.
3. The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.
4. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.
5. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
6. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.

7. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
  - a. Sublease or assignment of the lease of the unit;
  - b. Sale or other voluntary transfer of the ownership of the unit;
  - c. The entry and enforcement of any judgment of foreclosure on the property containing the unit;  
or
  - d. The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

**Section 20-14.16 Rent Restrictions for Rental Units; Leases and Fees.**

1. The initial rent for a restricted rental unit shall be set by the Administrative Agent.
2. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.
3. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
  - a. Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
4. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
5. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.
6. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
7. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
8. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

**Section 20-14.17 Tenant Income Eligibility.**

1. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
  - a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of the regional median income by household size.
  - b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median income by household size.
  - c. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of the regional median income by household size.

2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - a. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - b. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - c. The household is currently in substandard or overcrowded living conditions;
  - d. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - e. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
3. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

**Section 20-14.18 Municipal Housing Liaison.**

1. The Municipal Housing Liaison shall be approved by municipal resolution.
2. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.
3. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:
  - a. Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.
  - b. The oversight of the Affirmative Marketing Plan and affordability controls.
  - c. When applicable, overseeing and monitoring any contracting Administrative Agent.
  - d. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
  - e. Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
  - f. Coordinating meetings with affordable housing providers and administrative agents, as needed.
  - g. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
  - h. Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.
  - i. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
  - j. Listing on the municipal website contact information for the MHL and Administrative Agents.

## **Section 20-14.19 Administrative Agent.**

1. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
2. The fees for administrative agents shall be paid as follows:
  - a. Administrative agent fees related to rental units shall be paid by the developer/owner.
  - b. Administrative agent fees related to initial sale of units shall be paid by the developer.
  - c. Administrative agent fees related to resales shall be paid by the seller of the affordable home.
  - d. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
3. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
4. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
  - a. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
  - b. Affirmative marketing:
    - i. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
    - ii. Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
  - c. Household certification.
    - i. Soliciting, scheduling, conducting and following up on interviews with interested households.
    - ii. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
    - iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within five (5) business days of the determination thereof.
    - iv. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
    - v. Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.
    - vi. Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
  - d. Affordability controls.
    - i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.

- ii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
  - iii. Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
  - iv. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.
- e. Records retention.
  - i. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
  - ii. Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.
- f. Resales and re-rentals.
  - i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.
  - ii. Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
- g. Processing requests from unit owners.
  - i. Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.
  - ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.
  - iii. Notifying the municipality of an owner's intent to sell a restricted unit.
  - iv. Making determinations on requests by owners of restricted units for hardship waivers.
- h. Enforcement.
  - i. Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
  - ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
  - iii. Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;
  - iv. Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
  - v. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.

- i. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

**Section 20-14.20 Responsibilities of The Owner of a development containing affordable units.**

1. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:
  - a. Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
  - b. The total number of units in the project and the number of affordable units.
  - c. The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
  - d. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
  - e. A projected construction schedule.
  - f. The location of any common areas and elevators.
  - g. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.
2. In addition to A above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
  - a. Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.
  - b. Provide to the administrative agent a description of any applicable fees.
  - c. Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
  - d. Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
  - e. Provide to the administrative agent a proposed form of lease for any rental units.
  - f. Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
  - g. Strive to maintain the continued occupancy of the affordable units during the entire restricted period.
3. In addition to A, above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
  - a. Proposed pricing for all units, including any purchaser options and add-on items.
  - b. Realistic condominium or homeowner association fees and any other applicable fees.
  - c. Estimated real property taxes.

- d. Sewer, water, trash disposal, and any other utility assessments.
- e. Flood insurance requirement, if applicable.
- f. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

#### **Section 20-14.21 Enforcement of Affordable Housing Regulations**

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
2. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  - a. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
    - i. A fine of not more than \$1,000.00 or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
    - ii. In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - iii. In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
3. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
4. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
  - a. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
  - b. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's

- sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
- c. Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
  - d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
  - e. Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
  - f. The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.
5. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
  6. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or

mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.

7. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.
8. Appeals
  - a. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

**SECTION 2.: REPEAL SECTIONS 20-15 THROUGH 20-15.10 AND REPLACE WITH NEW SECTIONS 20-15 THROUGH 20-15.10 AS FOLLOWS:**

**Section 20-15 Affordable Housing Development Fees**

**Section 20-15.1 Purpose**

1. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

**Section 20-15.2 Basic Requirements**

1. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
2. The municipality shall not spend development fees until the court has approved a plan for spending such fees.
3. The definitions under Section 20-14.2 shall apply.

**Section 20-15.3 Residential Development Fees**

1. Imposed fees
  - a. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
  - b. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0 percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5 percent of the equalized assessed value on the first two units; and the specified higher percentage of 6 percent of the equalized assessed value for the two

additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. Eligible exactions, ineligible exactions and exemptions for residential development
  - a. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
  - b. Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
  - c. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
  - d. No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

#### **Section 20-15.4 Non-Residential Development Fees**

1. Imposition of fees
  - a. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5 percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
  - b. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5 percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5 percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
2. Eligible exactions, ineligible exactions and exemptions for non-residential development
  - a. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5 percent development fee, unless otherwise exempted below.
  - b. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
5. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

#### **Section 20-15.5 Collection Procedures**

1. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
4. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
5. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
8. Fifty percent (50 percent) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

#### **Section 20-15.6 Appeal of development fees**

1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
2. A developer may challenge non-residential development fees imposed by filing a challenge with the director of the Division of Taxation. Pending a review and determination by the director, which

shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

#### **Section 20-15.7 Affordable Housing Trust Fund**

1. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - a. Payments in lieu of on-site construction of an affordable unit,;
  - b. Funds contributed by developers to make 10 percent of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
  - c. Rental income from municipally operated units;
  - d. Repayments from affordable housing program loans;
  - e. Recapture funds;
  - f. Proceeds from the sale of affordable units; and
  - g. Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
3. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

#### **Section 20-15.8 Use of Funds**

1. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
2. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
3. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

- a. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
  - b. Affordability assistance for very low-income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
4. No more than 20 percent of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

#### **Section 20-15.9 Ongoing Collection of Fees**

1. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
2. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

#### **Section 20-15.10 Emergent Affordable Housing Opportunities.**

1. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

#### **SECTION 3: AMENDING CHAPTER 20, SECTION 20-4.19 AFFORDABLE ACCESSORY APARTMENTS AS FOLLOWS:**

- a. Purpose. The purpose of the Affordable Accessory Apartments is to accommodate the development and conversion of accessory apartments to provide affordable housing in accordance with the Township's Housing Element and Fair Share Plan.
- b. Where Permitted. Affordable Accessory Apartments are provided on Schedule B Commercial and Mixed-Use Districts.
- c. The definitions of Section 20-14.2 shall apply.
- d. Additional Conditions.
  1. The provisions of Section 20-14.5-3 shall apply.
  2. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the "Affordable Accessory Apartment" is located running with the land and limiting its subsequent rental or sale.
  3. No more than 10 units of the Township's Affordable Housing Obligation to produce-"Affordable Accessory Apartments" shall be permitted.
  4. The "Affordable Accessory Apartment" program shall be affirmatively marketed to the Housing Region 6 consisting of Atlantic, Cape May, Cumberland and Salem counties in accordance with the "Affirmative Marketing Plan".
- e. At the end of the required deed restriction, the Township may negotiate with the owner to extend affordability controls subject to the expiration of affordability controls procedures in Section 20-14.5-5.
- f. At the termination of the deed restriction, the affordable accessory apartment will be permitted to be marketed to the general public without affordability controls if the controls are not extended as provided above.
- g. The "Affordable Accessory Apartment" may be a newly created accessory apartment in the Commercial and Mixed-Use District.

- h. Administration of the "Affordable Accessory Apartment" Program shall be in accordance with the following and Sections 20-14 through 20-14.21.
  - 1. The Township Committee of Upper Township shall designate an administrative entity to administer the "Affordable Accessory Apartment" program in accordance with the following:
    - (a) The administrative entity shall administer the "Affordable Accessory Apartment" program including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports, and affirmatively marketing the "Affordable Accessory Apartment" program;
    - (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with Section 20-14 through 20-14. 21 and/or the provisions of this subsection. All denials shall be in writing with the reasons clearly stated; and
    - (c) Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Township ensuring that the apartment shall meet the requirements of this subsection and the requirements of Sections 20-14 through 20-14.21.
  - i. Application Procedures.
    - 1. Each application for the creation of an "Affordable Accessory Apartment" shall submit the following information to the designated administrative entity:
      - (a) A sketch of floor plan(s) showing the location, size and relationship of both the "Affordable Accessory Apartment" and the primary dwelling within the building or in another structure;
      - (b) Rough elevations showing the modification of any exterior building facade to which changes are proposed; and
      - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any natural or man-made conditions which might affect construction.

**SECTION 4: REPEALER:** All ordinances or code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 5: SEVERABILITY:** If any section, subsection, paragraph, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

**SECTION 6: EFFECTIVE DATE:** This ordinance shall take effect upon its passage and publication, as required by law.

**SECTION 7: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25<sup>TH</sup> DAY OF FEBRUARY, 2026 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 9<sup>TH</sup> DAY OF MARCH, 2026 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

- 25. Public hearing and final adoption of Ordinance No. 006-2026 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER 13 (STREETS, SIDEWALKS AND SANITATION) OF THE CODE OF UPPER TOWNSHIP TO ESTABLISH A MAILBOX DAMAGE AND RESTORATION POLICY.

**The Township Administrator provided a brief summary of Ordinance 006-2026.**

**Mayor Corson then opened the public hearing. During the public hearing portion there were the following speakers:**

Nathalie Neiss, Petersburg, inquired if this Ordinance has anything to do with the Safe Routes to School grant project.

There being no more speakers, Mayor Corson then closed the public hearing. Motion by Zachary Palombo, second by Tyler Casaccio, to adopt Ordinance No. 006-2026. During roll call vote all four Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
O R D I N A N C E**

**ORDINANCE NO. 006-2026**

**AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER 13 (STREETS, SIDEWALKS AND SANITATION) OF THE CODE OF UPPER TOWNSHIP TO ESTABLISH A MAILBOX DAMAGE AND RESTORATION POLICY**

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**WHEREAS**, the Township of Upper performs essential snow removal operations to ensure the safety and mobility of the public during winter weather events; and

**WHEREAS**, the weight of snow discharge and the operation of heavy machinery in the municipal right of way can occasionally result in damage to mailboxes; and

**WHEREAS**, the Township Committee desires to establish a uniform and compassionate policy to address such damage while protecting the fiscal interests of the taxpayers.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

**SECTION 1.** Chapter 13 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

**SECTION 13-8 – MAILBOX DAMAGE AND RESTORATION POLICY.**

**13-8.1 Scope of Liability.** The Township of Upper adopts a Total Force liability standard for mailbox damage occurring during official snow removal operations along roadways that are serviced by the Township of Upper during a snow event. This policy shall not extend to damages incurred to properties along County or State roadways that are not caused by the Township of Upper and/or its agents or employees. The Township shall accept responsibility for mailboxes that are either physically struck by municipal equipment or rendered inoperable due to the force and weight of snow that is discharged by municipal equipment.

**13-8.2 Eligibility Requirements.** To be eligible for remediation under this section, the damaged mailbox must have been installed in accordance with United States Postal Service (USPS) standards regarding required height and required setback from the roadway. Mailboxes that were rotted, unstable, or improperly installed prior to the weather event are not eligible for reimbursement.

**13-8.3 Claim Process.**

a. Notification: The property owner must notify the Department of Public Works of the damage within 48 hours of the conclusion of the snow event.

b. Inspection: A Public Works representative shall inspect the site within 72 business hours of notification to validate the claim and confirm compliance with installation standards.

**13-8.4 Remediation and Reimbursement.**

a. Financial Reimbursement: Upon validation of the claim, the Township shall issue a one-time payment of \$50.00 to the property owner of record. This payment is intended to cover the cost of materials for a standard mailbox and post.

b. Annual Limit: Reimbursement is limited to one (1) occurrence per property, per calendar year.

c. Discretionary Installation: In the sole and absolute discretion of the Superintendent of Public Works, the Township may perform the physical installation of a standard mailbox and post for residents who are elderly and/or who possess a physical disability that prevents them from performing the repair. This service is provided on a case-by-case basis and is subject to the availability of Township personnel.

**SECTION 2: REPEALER:** All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

**SECTION 3: EFFECTIVE DATE:** This Ordinance shall take effect immediately upon final adoption and publication as required by law.

**SECTION 4: SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

**SECTION 5: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25<sup>TH</sup> DAY OF FEBRUARY, 2026 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 9<sup>TH</sup> DAY OF MARCH, 2026 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

### CORRESPONDENCE

### NEW BUSINESS

26. Parish of Saint Maximilian Kolbe request use of the Strathmere Beach for an Easter Sunrise Mass on April 5, 2026. **Motion by Curtis Corson, second by Tyler Casaccio, to approve the request. During roll call vote three Committee members present voted in the affirmative. Zachary Palombo abstained.**
27. Parish of Saint Maximilian Kolbe request to hold Raffle RA #620 at 200 Tuckahoe Road, Marmora on August 14, 2026. **Motion by Victor Nappen, second by Tyler Casaccio, to approve the request. During roll call vote three Committee members present voted in the affirmative. Zachary Palombo abstained.**

### UNFINISHED BUSINESS

### PAYMENT OF BILLS

28. "I hereby move that all claims submitted for payment at this meeting be approved and then incorporated in full in the minutes of this meeting." **Motion by Victor Nappen, second by Tyler Palombo. During roll call vote three Committee members voted in the affirmative. Committeeman Casaccio abstained from voting on PO #26-0017, #26-00245 and #26-00246 and voted in the affirmative on the remaining items.**

Bills approved for payment: **\$177,646.20**  
Payroll: **\$269,819.85**

### PUBLIC COMMENT – LIMITED TO FIVE (5) MINUTES PER PERSON

**Nathalie Neiss, Petersburg,** announced she will be running in the Primary for Upper Township Committee.

**Lou Barbato, Petersburg,** spoke in opposition of using the Safe Routes to School grant money for bike lanes and sidewalks along Old Tuckahoe Road and North Shore Road.

**Nathalie Neiss, Petersburg,** spoke regarding the Safe Routes to School public information meeting held on March 2nd.

**Barbara Murphy Leary, Seaville,** spoke in favor of using the Safe Route to School grant money for the bike paths and sidewalks. She then thanked the Committee for attempting to answer all public comments to the best of their ability in a polite and fair way.

### CLOSED SESSION

29. Resolution to conduct a closed meeting pursuant to N.J.S.A. 10:4-12, from which the public shall be excluded.

**RESOLUTION NO. 093-2026  
MOTION GOING INTO CLOSED SESSION  
MARCH 9, 2026**

I hereby move that a resolution be incorporated into the minutes authorizing the Township Committee to enter into an executive session for the following matters pursuant to the Open Public Meetings Act:

**MATTERS:**

1. Contract negotiation – Delta Dental
2. Contract negotiation – Block 858, Lot 1.05
3. Personnel

I also include in my motion the estimated time and the circumstances under which the discussion conducted in closed session can be disclosed to the public as follows:

- A. It is anticipated that the matters discussed in closed session may be disclosed to the public upon the determination of the Township Committee that the public interest will no longer be served by such confidentiality.
- B. With respect to employment and personnel matters such discussions will be made public if and when formal action is taken or when the individuals involved consent that it can be made public.
- C. With respect to contract negotiations such matters will be made public when negotiations have ceased and there is no longer a reason for confidentiality.

Moved by: Zachary Palombo

Motion seconded by: Victor Nappen

Roll Call Vote with all four Committee members present voting in the affirmative.

**RECONVENE PUBLIC PORTION OF MEETING**

Motion by Victor Nappen, second by Tyler Casaccio, to reconvene the public portion of the meeting. During roll call vote all four Committee members present voted in the affirmative.

**ADJOURNMENT**

There being no further business this evening the meeting was adjourned at 7:08 P.M., with a motion by Victor Nappen, second by Zachary Palombo, and all four Committee members present voting in the affirmative. The next regular Committee meeting is scheduled for March 23, 2026 at 5:30 P.M.

Minutes prepared by,

Joanne R. Herron, RMC  
Township Clerk

**Bills**

87119 03/09/26 A0025 ADVANTAGE RENTAL & SALES 492.15 3483

87120 03/09/26 A0091 ATLANTIC CITY ELECTRIC 5,750.79 3483

87121 03/09/26 A0117 AT&T 281.50 3483

87122 03/09/26 A0212 ANCERO, LLC 6,667.21 3483

87123 03/09/26 A0225 AUTOZONE NORTHEAST LLC 1,215.74 3483

87124 03/09/26 A0235 AMAZON CAPITAL SERVICES, INC. 91.47 3483

87125 03/09/26 A0244 AMTRUST NORTH AMERICA, INC. 1,527.00 3483  
87126 03/09/26 A0248 AIRESPRING, INC. 1,259.37 3483  
87127 03/09/26 A0260 AMENHAUSER, JOHN P. 7,500.00 3483  
87128 03/09/26 A0265 ARC REPROGRAPHICS SJ, INC 150.00 3483  
87129 03/09/26 A0266 ATLANTICARE REGIONAL MED CENTR 200.00 3483  
87130 03/09/26 B0032 BLANEY WEINBERG & CURIO PC 437.50 3483  
87131 03/09/26 B0092 BROKER, EUGENE JR. 150.00 3483  
87132 03/09/26 B0093 BARRY,CORRADO & GRASSI,PC 1,460.00 3483  
87133 03/09/26 B0139 BATTELINI TRANSPORTATION 876.36 3483  
87134 03/09/26 B0220 BERGEY'S TRUCK CENTERS 278.86 3483  
87135 03/09/26 B0232 BLUE FLAME GAS 453.05 3483  
87136 03/09/26 B0287 BIGLEAF NETWORKS, INC. 732.88 3483  
87137 03/09/26 B0288 KINGBARNES LLC 1,637.50 3483  
87138 03/09/26 B0304 BLUE MOUNTAIN DISTRIBUTORS 62.93 3483  
87139 03/09/26 C0042 CAMPBELL SUPPLY COMPANY 885.15 3483  
87140 03/09/26 C0048 CAPE MAY COUNTY MUA 41,772.63 3483  
87141 03/09/26 C0061 CAPRIONI FAMILY SEPTIC 845.00 3483  
87142 03/09/26 C0068 COMCAST 813.35 3483  
87143 03/09/26 C0143 CODY'S POWER EQUIPMENT 358.91 3483  
87144 03/09/26 C0223 CASA PAYROLL SERVICE 268.80 3483  
87145 03/09/26 C0247 CMRS-FP 2,000.00 3483  
87146 03/09/26 C0279 CASA REPORTING SERVICES LLC 172.80 3483  
87147 03/09/26 C0352 COLUMN SOFTWARE, PBC 498.08 3483  
87148 03/09/26 D0172 Dynamic Dollar Booster Club 300.00 3483  
87149 03/09/26 D0237 KERRY SCALFARO 125.00 3483  
87150 03/09/26 D0251 THE DEWEESE LAW FIRM, P.C. 5,340.00 3483  
87151 03/09/26 D0252 DEBLASIO & ASSOCIATES PC 5,082.50 3483  
87152 03/09/26 E0012 EHRlich PEST CONTROL INC 155.58 3483  
87153 03/09/26 G0120 PATRICK F. MARTIN 2,083.33 3483  
87154 03/09/26 G0147 GREATAMERICA FINANCIAL SVCS. 165.00 3483  
87155 03/09/26 G0169 GROFF TRACTOR MID ATLANTIC LLC 2,420.83 3483  
87156 03/09/26 G0213 WJ GROSS INC 30,477.50 3483  
87157 03/09/26 H0073 HOME DEPOT CRC/GECF 59.96 3483  
87158 03/09/26 I0016 INSTITUTE FOR PROF DEVELOPMENT 50.00 3483  
87159 03/09/26 J0319 JERSEY TECH PROS 10,092.94 3483  
87160 03/09/26 L0007 LC EQUIPMENT, INC. 60.00 3483  
87161 03/09/26 L0075 LEXISNEXIS 444.00 3483  
87162 03/09/26 M0313 MAVIS TIRE SUPPLY, LLC 1,063.96 3483  
87163 03/09/26 M0345 MAJESTIC OIL 2,819.25 3483  
87164 03/09/26 N0004 NJ-AMERICAN WATER CO. 61.64 3483  
87165 03/09/26 N0043 NAPA AUTO PARTS 1,387.01 3483  
87166 03/09/26 N0143 NATIONAL TIME SYSTEMS 459.80 3483  
87167 03/09/26 N0154 NEW HORIZON COMMUNICATIONS 1,273.48 3483  
87168 03/09/26 P0136 POSTNET 61.63 3483  
87169 03/09/26 P0221 PITNEY ELM, LLC 375.00 3483  
87170 03/09/26 R0030 RIGGINS, INC. 6,887.63 3483  
87171 03/09/26 R0100 ROBERTS OXYGEN COMPANY, INC. 133.95 3483  
87172 03/09/26 R120 RAFFAELE, ZACHARY 278.97 3483  
87173 03/09/26 S0018 SUBURBAN PROPANE, LP 1,303.29 3483  
87174 03/09/26 S0057 SERVICE TIRE TRUCK CENTERS 1,518.58 3483  
87175 03/09/26 S0134 SO. JERSEY GAS COMPANY 5,775.54 3483  
87176 03/09/26 S0253 SAMPLE MEDIA, INC. 63.50 3483  
87177 03/09/26 S0254 SHOPRITE 229.71 3483  
87178 03/09/26 S0361 SOUTH JERSEY WATER TEST, LLC 432.00 3483  
87179 03/09/26 S0363 STARR SEPTIC, LLC. 360.00 3483  
87180 03/09/26 T0180 TRI-COUNTY PEST CONTROL, INC 25.00 3483  
87181 03/09/26 T0192 MARSH & McLENNAN AGENCY/TRION 679.84 3483  
87182 03/09/26 T0220 TRINITY CODE INSPECTIONS, LLC 250.00 3483  
87183 03/09/26 U0067 UT HEALTH REIMB. ACCOUNT 11,538.30 3483  
87184 03/09/26 U0076 U.S.BANK NATIONAL ASSOCIATION 47.98 3483  
87185 03/09/26 V0001 VCI EMERGENCY VEHICLE 2,126.62 3483  
87186 03/09/26 V0013 VERIZON WIRELESS 724.71 3483  
87187 03/09/26 W0135 THE LAW OFFICE OF BRANDON D 1,048.46 3483  
87188 03/09/26 Y0003 Y-PERS INC 701.95 3483

87189 03/09/26 Z0017 ZOLL DATA SYSTEMS, INC. 322.73 3483  
Total: \$177,646.20